



STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM C. WHITBECK
CHIEF JUDGE

October 28, 2005

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Honorable Clifford W. Taylor
Chief Justice, Michigan Supreme Court
925 W. Ottawa
P.O. Box 30052
Lansing, MI 48909

Re: Administrative Order 2004-5, Summary Disposition Fast Track

Dear Chief Justice Taylor:

I am enclosing a proposal to amend Administrative Order 2004-5 concerning the Summary Disposition Fast Track at the Court of Appeals. The administrative order arose out of a proposal from the Court of Appeals Case Management Work Group. You may recall that the final paragraph of AO 2004-5 states that, "If, at any time during the monitoring process, it becomes apparent to the work group that procedural aspects of the program need to be modified, the group is encouraged to seek authorization from [the Supreme] Court to implement modifications." On behalf of the work group, I am seeking the Supreme Court's authorization to implement the modifications contained in the attached proposal.

The Court of Appeals posts monthly statistical reports concerning the Summary Disposition Track on the Court of Appeals website at http://courtofappeals.mijud.net/resources/90_90_Reports.htm. These reports reflect a burgeoning caseload, the great bulk of which is moving through the Court of Appeals at the anticipated pace. However, we have found that the various truncated time frames for the ordering of transcripts and the filing of motions to remove, to show cause court reporters, and to extend time to file briefs complicates the management of these cases. When combined with differences in the processes and procedures used in the various trial courts, these details have proven to be a significant drain on practitioner and Court resources for which there is no conceivable benefit. Further, the practitioners have indicated a significant dissatisfaction with the option of allowing appellant to waive the transcript without the agreement of appellee(s). Accordingly, the work group has met through the past few months to review the problem areas and design solutions. An earlier draft proposal was the subject of discussion at the Appellate Practice Section's Annual Meeting in September, and the attached proposal evolved in part from comments at that meeting.

Our proposed amendments simplify the presentation and processing of these cases during record production and briefing. Our goal is to give both the parties and the Court more flexibility in managing these cases. Highlights include:

- If there were hearings at the trial court level, the appellant will either order the transcripts or the parties will waive them by stipulation. An appellant will no longer be able to waive the transcripts without the agreement of appellee(s).
- The litigants must append specified trial court documents to applications for leave and answers thereto.
- A litigant may file a motion to remove the case from the expedited track at any time, rather than within narrowly specified time frames, although filing the motion most closely in time to discovery of the basis for removal will maximize the likelihood that the motion may be granted.
- If a case is removed, the order directing removal shall state whether, and the deadlines by which, the parties may be entitled to file standard briefs.
- If a transcript must be ordered, the appellant must present evidence of the ordering with the claim of appeal or application for leave. The Court will enforce this requirement under the authority of MCR 7.201(B)(3).
- If an ordered transcript is not timely filed, any party may file an appropriate motion at any time, although filing as early as possible under the circumstances of the case will maximize the likelihood of success. If a motion is filed, the subsequent order will state the time for filing any outstanding brief(s).
- Absent an order that resets the time, and regardless when the transcript is filed, the time for filing the appellant's brief will run from the filing of the claim of appeal or the certification of the order granting leave to appeal. The time for filing an appellee's brief and any reply brief will run from the date of service of the preceding brief. Appellees will have 28 days to file their briefs, rather than the present 21 days.
- Just as an appellant may rely on its application for leave as its brief on appeal, appellees may rely on their answers to applications for leave as their briefs on appeal.
- With proper notation, any appellee's brief may omit the specified appendices if those documents were appended to the appellant's brief.
- The Court will request the trial court record 28 days after jurisdiction is confirmed and deficiencies are corrected to allow more time for ordered transcripts to be filed with the trial court and archived with that court's record, while still ensuring that the Court of Appeals receives that record by the time briefing is concluded.

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If the Supreme Court approves the proposed amendments, we ask that they be given an effective date of January 1, 2006, *at the latest* so that we can develop as much experience as possible under the amended order before the expiration of the test period in December 2006. We will publicize the changes with every resource at our disposal, including individual mailings to all parties in cases filed on or after January 1, 2006.

As always, I will be happy to provide your Court with whatever assistance it requests in considering and implementing these proposed amendments.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Whitbeck", with a stylized flourish at the end.

William C. Whitbeck
Chief Judge

cc: Case Management Work Group
Ms. Deb Hebert (Chair of APS Council)
Ms. Lynn Richardson
Mr. Corbin Davis